

AMENDED IN ASSEMBLY MAY 6, 2003

AMENDED IN ASSEMBLY APRIL 8, 2003

AMENDED IN ASSEMBLY MARCH 25, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## ASSEMBLY BILL

**No. 816**

**Introduced by Assembly Member Reyes  
(Principal coauthors: Assembly Members Canciamilla and  
Richman)**

February 20, 2003

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An act to add Section 9607.5 to the Public Utilities Code, and to amend Section 80110 of the Water Code, relating to electric power.

### LEGISLATIVE COUNSEL'S DIGEST

AB 816, as amended, Reyes. Local publicly owned electric utilities: Public Utilities Commission: direct transactions.

(1) Existing law authorizes the Department of Water Resources to administer existing contracts for the purchase of electric power, and to sell power to retail end use customers and, with specified exceptions, local publicly owned electric utilities, at not more than the department's acquisition costs. Existing law imposes on retail end use customers of electrical corporations and community choice aggregators nonbypassable charges to repay certain costs of the department and electrical corporations.

This bill, *except as specified*, would additionally impose on a local publicly owned electric utility that ~~begins serving electricity~~ after February 1, 2001, *initiates electric service* to existing or new ~~load~~ *customers* in the service territory of an electrical corporation, as that

territory existed on February 1, 2001, responsibility for those repayment costs, as determined by the Public Utilities Commission. The bill would require the local publicly owned electric utility to determine the appropriate method by which to recover the costs imposed from its customers. The bill would require the cost recovery mechanism to ensure that any charges payable to the department and to the electrical corporation by a retail end use customer are promptly remitted to the party entitled to payment. By imposing new responsibilities on local publicly owned electric utilities, this bill would impose a state-mandated local program.

(2) Under existing law, the commission has regulatory authority over public utilities, including electrical corporations, and authorizes the commission to fix just and reasonable rates and charges. Existing law requires the commission to authorize direct transactions between electricity suppliers and end use customers, *also known as direct access*. Existing law suspends, after a period of time to be determined by the commission, the right of a retail end use customer to acquire electricity from other electric service providers pursuant to direct transactions, until the department no longer supplies electricity under those provisions.

This bill would require the commission to reinstate the right of retail end use customers *with a load requirement of 500 kilowatts or more* to acquire electricity from other electric service providers subject to specified conditions. *The bill would require the commission, in considering the procurement plan of an electrical corporation, to set the amount of direct access permitted to minimize the potential that the electrical corporation will enter into commitments that the subsequent exercise of direct access will render unnecessary or excessive. The bill would require the commission to adopt rules it determines to be necessary to implement the reinstatement of direct access, including any notice requirements imposed as a condition of direct access, and provisions to ensure the prompt recovery by an electrical corporation of costs it incurs to reinstate and administer direct access.* Because a violation of ~~an~~ a rule or order of the commission is a crime under existing law, the bill would impose a state-mandated local program by creating a new crime.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund



to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 9607.5 is added to the Public Utilities  
2 Code, to read:  
3 (a) ~~To (1) Except as specified in paragraph (2), to prevent cost~~  
4 ~~shifting of recoverable costs between customers, a local publicly~~  
5 ~~owned electric utility that begins serving electricity after February~~  
6 ~~1, 2001, to existing or new load, after February 1, 2004, initiates~~  
7 ~~electric service to existing or new customers in the service territory~~  
8 ~~of an electrical corporation, as that territory existed on February~~  
9 ~~1, 2001, is responsible for the costs described in subdivisions (d),~~  
10 ~~(e), (f), and (g) of Section 366.2, as determined by the commission.~~  
11 (2) *Notwithstanding paragraph (1), a municipality that*  
12 *provides electric service and annexes adjoining territory within*  
13 *the service territory of an electrical corporation, or any new*  
14 *customer of the municipality not previously served by the electrical*  
15 *corporation and located within adjoining territory annexed by the*  
16 *municipality, is not responsible for payment of the costs described*  
17 *in subdivisions (d), (e), (f), and (g) of Section 366.2, commencing*  
18 *with the date of completion of the annexation, if all of the following*  
19 *requirements are met:*  
20 (A) *The municipality is operating its own local publicly owned*  
21 *utility.*  
22 (B) *The municipality was serving all electric customers*  
23 *residing within its corporate boundaries before February 1, 2001.*  
24 (C) *The municipality, on or after February 1, 2001, annexed*  
25 *adjoining territory within the service territory of an electrical*  
26 *corporation.*

1 (D) *The municipality provides all municipal services,*  
2 *including, but not limited to, electricity, to residents of the annexed*  
3 *area.*

4 (b) The local publicly owned electric utility is not responsible  
5 for the costs described in subdivisions (d), (e), (f), and (g) of  
6 ~~Sections~~ Section 366.2 when it serves new load within its  
7 exclusive electric service territory as that exclusive electric service  
8 territory existed on February 1, 2001.

9 (c) The local publicly owned electric utility shall determine the  
10 appropriate method by which to recover the costs imposed  
11 pursuant to this section from its customers. The cost recovery  
12 mechanism shall ensure that any charges payable to the  
13 Department of Water Resources and to the electrical corporation  
14 by a retail end use customer are promptly remitted to the party  
15 entitled to payment. Charges imposed pursuant to this section are  
16 nonbypassable.

17 SEC. 2. Section 80110 of the Water Code is amended to read:  
18 80110. (a) The department shall retain title to all power sold  
19 by it to the retail end use customers. The department shall be  
20 entitled to recover, as a revenue requirement, amounts and at the  
21 times necessary to enable it to comply with Section 80134, and  
22 shall advise the commission as the department determines to be  
23 appropriate. Those revenue requirements may also include any  
24 advances made to the department hereunder or hereafter for  
25 purposes of this division, or from the Department of Water  
26 Resources Electric Power Fund, and General Fund moneys  
27 expended by the department pursuant to the Governor's State of  
28 Emergency Proclamation, dated January 17, 2001. For purposes  
29 of this division and except as otherwise provided in this section,  
30 the commission's authority as set forth in Section 451 of the Public  
31 Utilities Code shall apply, except any just and reasonable review  
32 under Section 451 shall be conducted and determined by the  
33 department. The commission may enter into an agreement with the  
34 department with respect to charges under Section 451 for purposes  
35 of this division, and that agreement shall have the force and effect  
36 of a financing order adopted in accordance with Article 5.5  
37 (commencing with Section 840) of Chapter 4 of Part 1 of Division  
38 1 of the Public Utilities Code, as determined by the commission.  
39 In no case shall the commission increase the electricity charges in  
40 effect on February 1, 2001, for residential customers for existing

1 baseline quantities or usage by those customers of up to 130  
2 percent of existing baseline quantities, until the department has  
3 recovered the costs of power it has procured for the electrical  
4 corporation's retail end use customers as provided in this division.

5 ~~(b) The right of retail end use customers pursuant to Article 6~~

6 *(b) The commission shall reinstate the right of retail end*  
7 *customers with a load requirement of 500 kilowatts or more to*  
8 *acquire service from other electric service providers pursuant to*  
9 *Article 6 (commencing with Section 360) of Chapter 2.3 of Part*  
10 *1 of Division 1 of the Public Utilities Code to acquire service from*  
11 ~~*other providers shall be reinstated by the commission, once each*~~  
12 ~~*of the following conditions are met:*~~

13 (1) The commission has established a cost responsibility  
14 surcharge for customers that opt for direct transactions. Each retail  
15 end use customer that has purchased power from an electrical  
16 corporation on or after February 1, 2001, shall bear a fair share of  
17 the department's electricity purchase costs that are recoverable  
18 from electrical corporation customers in commission-approved  
19 rates *including costs described in subdivisions (d), (e), (f), and (g)*  
20 *of Section 366.2.*

21 (2) The State of California has issued revenue bonds pursuant  
22 to Chapter 2.5 (commencing with Section 80130).

23 (3) The electrical corporations are procuring electricity under  
24 procurement plans pursuant to Section 454.5 of the Public Utilities  
25 Code.

26 (4) *The commission has resolved all outstanding issues in the*  
27 *direct access phase of commission Rulemaking 02-01-011.*

28 (5) *The commission has adopted rules for the treatment of*  
29 *direct access customers who voluntarily or involuntarily return to*  
30 *electrical corporation bundled service. The rules adopted by the*  
31 *commission shall ensure that electric corporation customers*  
32 *receiving bundled service are indifferent to cost shifting caused by*  
33 *direct access customers returning to bundled service.*

34 (c) The department shall have the same rights with respect to  
35 the payment by retail end use customers for power sold by the  
36 department as do providers of power to those customers.

37 (d) *The commission, in considering the procurement plan of an*  
38 *electrical corporation, shall set the amount of direct access*  
39 *permitted to minimize the potential that the electrical corporation*

1 *will enter into commitments that the subsequent exercise of direct*  
2 *access will render unnecessary or excessive.*

3 *(e) The commission shall adopt rules it determines to be*  
4 *necessary to implement the reinstatement of direct access pursuant*  
5 *to this section, including any notice requirements imposed as a*  
6 *condition of direct access, and provisions to ensure the prompt*  
7 *recovery by an electrical corporation of costs it incurs to reinstate*  
8 *and administer direct access.*

9 SEC. 3. No reimbursement is required by this act pursuant to  
10 Section 6 of Article XIII B of the California Constitution for  
11 certain costs that may be incurred by a local agency or school  
12 district because in that regard this act creates a new crime or  
13 infraction, eliminates a crime or infraction, or changes the penalty  
14 for a crime or infraction, within the meaning of Section 17556 of  
15 the Government Code, or changes the definition of a crime within  
16 the meaning of Section 6 of Article XIII B of the California  
17 Constitution.

18 However, notwithstanding Section 17610 of the Government  
19 Code, if the Commission on State Mandates determines that this  
20 act contains other costs mandated by the state, reimbursement to  
21 local agencies and school districts for those costs shall be made  
22 pursuant to Part 7 (commencing with Section 17500) of Division  
23 4 of Title 2 of the Government Code. If the statewide cost of the  
24 claim for reimbursement does not exceed one million dollars  
25 (\$1,000,000), reimbursement shall be made from the State  
26 Mandates Claims Fund.

